

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RUBEN DE LA PENA,

Defendant.

3:10-cr-00142-RCJ-VPC-1

ORDER

A grand jury indicted Defendant Ruben De La Pena of one count of possessing a substance containing methamphetamine with intent to distribute in violation of 21 U.S.C. § 841(a)(1), (b)(1)(A)(viii). Defendant pleaded guilty pursuant to a plea agreement. The Court sentenced Defendant to 120 months imprisonment.

The Court denied a habeas corpus motion under 28 U.S.C. § 2255. Defendant asked the Court to reduce his sentence under 18 U.S.C. § 3582(c)(2) and Amendment 782 to U.S.S.G. § 1B1.10. The Court denied the motion because Defendant had been sentenced to the statutory minimum such that no retroactive amendment to the guideline range could aid him. *See United States v. Sykes*, 658 F.3d 1140, 1146 (9th Cir. 2011). The Court denied a second motion. Defendant filed a third similar motion, invoking a statute directing the Bureau of Prisons to award good time credit to qualified inmates. The Court noted that it could not interfere with the Bureau of Prisons's calculations except pursuant to a petition for a writ of habeas corpus under 28 U.S.C. § 2241, *Ortiz-Sandoval v. Gomez*, 81 F.3d 891, 895 & n.2 (9th Cir. 1996), and that such a petition must be filed not in the district where the prisoner was sentenced, but in the

1 district where he is incarcerated, *Rumsfeld v. Padilla*, 542 U.S. 426, 442 (2004). Defendant is
2 incarcerated in Texas. The Court therefore denied the motion for lack of jurisdiction.

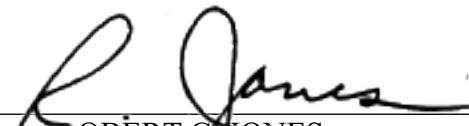
3 Defendant has now asked the Court to vacate the judgment of conviction under Civil Rule
4 60(b) based on the alleged ineffectiveness of his counsel in plea negotiations and miscellaneous
5 sentencing errors. The present motion is in substance a successive motion under § 2255, and
6 Defendant must petition the Court of Appeals for leave to file a successive habeas corpus motion.
7 *See* 28 U.S.C. § 2255(h).

8 **CONCLUSION**

9 IT IS HEREBY ORDERED that the Motion to Vacate Judgment Pursuant to Rule 60(b)
10 (ECF No. 90) is DENIED.

11 IT IS SO ORDERED.

12 Dated this 23rd day of August, 2016.

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15 ROBERT C. JONES
16 United States District Judge
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